

Appendix C

Amendments to National Instrument 45-106 *Prospectus and Registration Exemptions*

1. National Instrument 45-106 *Prospectus and Registration Exemptions* is amended by this Instrument.

2. The following is added after section 2.42:

“Capital accumulation plan

2.42.1 (1) In this section,

“capital accumulation plan” means a tax assisted investment or savings plan, including a defined contribution registered pension plan, a group RRSP, a group registered education savings plan, or a deferred profit sharing plan, established by a plan sponsor that permits a member to make investment decisions among two or more investment options offered within the plan and in Québec and Manitoba, includes a simplified pension plan.

“member” means, for the purposes of the definition of capital accumulation plan, a current or former employee of an employer, or a person who belongs, or did belong to a trade union or association, or

- (a) his or her spouse,
- (b) a trustee, custodian or administrator who is acting on his or her behalf, or for his or her benefit, or on behalf of, or for the benefit of, his or her spouse, or
- (c) his or her holding entity, or a holding entity of his or her spouse,

that has assets in a capital accumulation plan, and includes a person that is eligible to participate in a capital accumulation plan.

“plan sponsor” means, for the purposes of the definition of capital accumulation plan, an employer, trustee, trade union or association or a combination of them that establishes a capital accumulation plan, and includes a service provider to the extent that the plan sponsor has delegated its responsibilities to the service provider.

“service provider” means, a person that provides services to a plan sponsor to design, establish, or operate a capital accumulation plan.”

- (2) The dealer registration requirement does not apply to a trade by a person in a security of a mutual fund to a capital accumulation plan, or to a member of a capital accumulation plan as part of the member’s participation in the capital accumulation plan, if the following conditions are met:

- (a) the plan sponsor selects the mutual funds that members will be able to invest in under the capital accumulation plan,
- (b) the plan sponsor establishes a policy, and provides members with a copy of the policy and any amendments to it, describing what happens if a member does not make an investment decision,
- (c) in addition to any other information that the plan sponsor believes is reasonably necessary for a member to make an investment decision within the capital accumulation plan, and unless that information has previously been provided, the plan sponsor provides the member with the following information about each mutual fund the member may invest in,
 - (i) the name of the mutual fund,
 - (ii) the name of the manager of the mutual fund and its portfolio adviser,
 - (iii) the fundamental investment objective of the mutual fund,
 - (iv) the investment strategies of the mutual fund or the types of investments the mutual fund may hold,
 - (v) a description of the risks associated with investing in the mutual fund,
 - (vi) where a member can obtain more information about each mutual fund's portfolio holdings,
 - (vii) where a member can obtain more information generally about each mutual fund, including any continuous disclosure, and
 - (viii) whether the mutual fund is considered foreign property for income tax purposes, and if so, a summary of the implications of that status for a member who invested in that mutual fund,
- (d) the plan sponsor provides members with a description and amount of any fees, expenses and penalties relating to the capital accumulation plan that are borne by the members, including:
 - (i) any costs that must be paid when the mutual fund is bought or sold,
 - (ii) costs associated with accessing or using any of the investment information, decision-making tools or investment advice provided by the plan sponsor,
 - (iii) mutual fund management fees,
 - (iv) mutual fund operating expenses,
 - (v) record keeping fees,
 - (vi) any costs for transferring among investment options, including penalties, book and market value adjustments and tax consequences,
 - (vii) account fees, and
 - (viii) fees for services provided by service providers

provided that the plan sponsor may disclose the fees, penalties and expenses on an aggregate basis, if the plan sponsor discloses the nature of the fees, expenses and penalties, and the aggregated fees do not include fees that arise because of a choice that is specific to a particular member.

- (e) the plan sponsor has within the past year, provided the members with performance information about each mutual fund the members may invest in, including,
 - (i) the name of the mutual fund for which the performance is being reported,
 - (ii) the performance of the mutual fund, including historical performance for one, 3, 5 and 10 years if available,
 - (iii) a performance calculation that is net of investment management fees and mutual fund expenses,
 - (iv) the method used to calculate the mutual fund's performance return calculation, and information about where a member could obtain a more detailed explanation of that method,
 - (v) the name and description of a broad-based securities market index, selected in accordance with National Instrument 81-106 *Investment Fund Continuous Disclosure*, for the mutual fund, and corresponding performance information for that index, and
 - (vi) a statement that past performance of the mutual fund is not necessarily an indication of future performance.
 - (f) the plan sponsor has, within the past year, informed members if there were any changes in the choice of mutual funds that members could invest in and where there was a change, provided information about what members needed to do to change their investment decision, or make a new investment,
 - (g) the plan sponsor provides members with investment decision-making tools that the plan sponsor reasonably believes are sufficient to assist them in making an investment decision within the capital accumulation plan,
 - (h) the plan sponsor provides the information required by paragraphs (b), (c), (d) and (g) prior to the member making an investment decision under the capital accumulation plan, and
 - (i) if the plan sponsor makes investment advice from a registrant available to members, the plan sponsor must provide members with information about how they can contact the registrant.
- (3) In Nova Scotia, the securities regulatory authority specifies pursuant to subclause 2(1)(ab)(iii) of the Securities Act (Nova Scotia) that documents containing the information described in paragraphs (2)(c) and (e) do not constitute an offering memorandum within the meaning of the *Securities Act* (Nova Scotia).
- (4) The prospectus requirement does not apply to a distribution of a security of a mutual fund in the circumstances set out in subsection (2), if
- (a) the conditions in subsection (2) have been complied with, and

(b) the mutual fund complies with Part 2 of National Instrument 81-102 *Mutual Funds*.”.

3. Part 6 is amended by adding the following:

“Notice required to rely on capital accumulation plan exemption

6.5.1 Before the first time a mutual fund relies on the exemption in section 2.42.1, the mutual fund must file a notice in the form found in Appendix C in each jurisdiction in which the mutual fund expects to distribute its securities.”

4. The following is added after Appendix B

“Appendix C

Notice of Intention to Rely on Exemption in s. 2.42.1

Issuer information

1. State the full name, address and telephone number of the mutual fund that distributed or intends to distribute the security.
2. State whether the mutual fund is or is not a reporting issuer and, if reporting, each of the jurisdictions in which it is reporting.
3. List each jurisdiction where the mutual fund is, or intends to distribute mutual fund securities in reliance on the exemption for capital accumulation plans and deliver the notice to the relevant securities regulatory authority listed in the attached Schedule.

Certificate

On behalf of the mutual fund, I certify that the statements made in this report are true.

Date: _____

Name of mutual fund (please print)

Print name and position of person signing

e-mail address of person signing

Signature

Schedule to Appendix C

Instruction:

Prior to relying on the exemption, you must file this notice with the securities regulatory authority in each jurisdiction in which the mutual fund is currently providing services to a capital accumulation plan, or where they intend to provide services to a capital accumulation plan. If you subsequently intend to provide services to a capital accumulation plan located in a new province, you must file a notice in that province.

Notice - Collection and use of personal information

The securities regulatory authorities collect the personal information required under this notice for the purposes of the administration and enforcement of the securities legislation. Freedom of information legislation in certain jurisdictions may require the securities regulatory authority to make this information available if requested. As a result, the public may be able to obtain access to the information.

If you have any questions about the collection and use of this information, contact the securities regulatory authorities in the jurisdictions where the mutual fund files this form, at the address(es) set out below.

British Columbia Securities Commission

P.O. Box 10142, Pacific Centre
701 West Georgia Street
Vancouver, BC V7Y 1L2
Telephone: (604) 899-6854
Toll free in British Columbia and Alberta 1-800-373-6393
Facsimile: (604) 899-6506
Attention: Exempt Distributions

Alberta Securities Commission

4th Floor, 300 – 5th Avenue SW
Calgary, AB T2P 3C4
Telephone: (403) 297-6454
Facsimile: (403) 297-6156

Saskatchewan Financial Services Commission

6th Floor 1919 Saskatchewan Drive
Regina, SK S4P 3V7
Telephone: (306) 787-5879
Facsimile: (306) 787-5899

The Manitoba Securities Commission

500 – 400 St. Mary Avenue
Winnipeg, MB R3C 4K5
Telephone: (204) 945-2548
Facsimile: (204) 945-0330

Ontario Securities Commission

20 Queen Street West
Suite 1900, Box 55
Toronto, ON M5H 3S8
Telephone: (416) 593-3682
Facsimile: (416) 593-8252
Public official contact regarding indirect collection of information:
Administrative Assistant to the Director of Corporate Finance
Telephone: (416) 593-8086

Autorité des marchés financiers

800, Square Victoria, 22^e étage
C.P. 246, Tour de la Bourse
Montréal (Québec) H4Z 1G3
Telephone: (514) 395-0337 or 1-877-525-0337
Facsimile: (514) 864-3681

New Brunswick Securities Commission

133 Prince William Street, Suite 606
Saint John, NB E2L 2B5
Telephone: (506) 658-3060
Facsimile: (506) 658-3059

Nova Scotia Securities Commission

2nd Floor, Joseph Howe Building
1690 Hollis Street
Halifax, NS B3J 3J9
Telephone: (902) 424-7768
Facsimile: (902) 424-4625

Prince Edward Island Securities Office

95 Rochford Street, P.O. Box 2000
Charlottetown, PE C1A 7N8
Telephone: (902) 368-4569
Facsimile: (902) 368-5283

Securities Commission of Newfoundland and Labrador

P.O. Box 8700
2nd Floor, West Block Confederation Building
St. John's, Newfoundland and Labrador A1B 4J6
Telephone: (709) 729-4189
Facsimile: (709) 729-6187

Government of Yukon

Department of Community Services
Law Centre, 3rd Floor
2130 Second Avenue
Whitehorse, YT Y1A 5H6
Telephone: (867) 667-5314
Facsimile: (867) 393-6251

Government of the Northwest Territories

Department of Justice
Securities Registry
1st Floor Stuart M. Hodgson Building
5009 – 49th Street
Yellowknife, NT X1A 2L9
Telephone: (867) 920-3318
Facsimile: (867) 873-0243

Government of Nunavut

Department of Justice
Legal Registries Division
P.O. Box 1000 – Station 570
1st Floor, Brown Building
Iqaluit, NU X0A 0H0
Telephone: (867) 975-6190
Facsimile: (867) 975-6194

5. These amendments come into force on ●.”